

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

COMMONSPIRIT HEALTH,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	
)	Case No. 3:21-cv-00460
HEALTHTRUST PURCHASING)	
GROUP, L.P., and)	
HPG ENTERPRISES, LLC,)	
)	
Defendants/Counterclaimants.)	

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE
RESPONSE TO COMMONSPIRIT HEALTH'S MOTION FOR RESOLUTION
OF DISCOVERY DISPUTE UNDER SEAL

Defendants/Counterclaimants ("HealthTrust") have moved the Court to seal their recently-filed Response to Plaintiff/Counter-Defendant CommonSpirit Health's ("CommonSpirit") Motion for Resolution of Discovery Dispute pursuant to Local Rule 5.03, Local Rule 7.01, Section 5.07 of Administrative Order No. 167-1, Federal Rule of Civil Procedure 5.2, and the Agreed Protective Order governing this case (*see* ECF No. 49).

CommonSpirit has moved to seal its motion, including the supporting declaration, and has designated its privilege log as confidential. HealthTrust's Response necessarily discusses that motion, declaration, and CommonSpirit's privilege log. If those papers are sealed, then the Response should be sealed as well.

Pursuant to Local Rule 5.03(a), the following elements of the Response reference, discuss, quote from, or include information that (i) CommonSpirit designated as “confidential” or “highly confidential attorneys’ eyes only,” (ii) CommonSpirit has moved to file under seal, or (iii) this Court sealed by Order:

- Page 1, Paragraph 2, in which HealthTrust quotes CommonSpirit’s portion of the Parties’ Supplemental Discovery Dispute Statement of November 11th (ECF No. 89), which the Court ordered to be sealed (ECF No. 94);
- Page 1, Paragraph 2, in which HealthTrust discusses a document that CommonSpirit submitted *in camera* and designated as “highly confidential attorneys’ eyes only”;
- Page 2, Paragraph 2, in which HealthTrust references and discusses the Declaration of John Frye, which CommonSpirit filed under seal as “CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER DATED SEPTEMBER 13, 2021” (ECF No. 99);
- Page 2, Paragraph 2, in which HealthTrust references an argument raised by CommonSpirit in its Motion for Resolution of Discovery Dispute, which CommonSpirit filed under seal as “CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER DATED SEPTEMBER 13, 2021” (ECF No. 100);
- Page 3, Paragraph 1, in which HealthTrust quotes from and discusses an entry from CommonSpirit’s privilege log, which CommonSpirit designated as “confidential”;
- Page 3, Paragraph 2, in which HealthTrust quotes from and discusses an entry from CommonSpirit’s privilege log, which CommonSpirit designated as “confidential”; and
- Page 3, Paragraph 3, in which HealthTrust directly quotes from and discusses an entry from CommonSpirit’s privilege log, which CommonSpirit designated as “confidential.”

These elements make up the bulk of the Response, warranting the sealing of the document in its entirety.¹

¹ To the extent that the Court would prefer HealthTrust to redact the Response, HealthTrust will do so promptly.

The Protective Order governing this litigation provides that any party intending to file materials “designated as ‘Confidential’ or ‘Attorney’s Eyes Only’ with a court or to disclose in a court filing information designated as ‘Confidential’ or ‘Attorney’s Eyes Only,’ the party shall take all steps required by that particular Court *to file the materials or filing under seal.*” (See ECF No. 49, at 9) (emphasis added). By means of CommonSpirit’s confidentiality designations and its filing the Motion for Resolution of Discovery Dispute and the Declaration of John Frye under seal, HealthTrust’s Response contains information that is protected by the Protective Order.

CONCLUSION

In light of CommonSpirit’s confidentiality designations, HealthTrust is required under the Protective Order to file its Response to CommonSpirit’s Motion under seal. HealthTrust respectfully requests that the Court exercise its discretion—pursuant to Federal Rule of Civil Procedure 26(c) and the principles set forth in *Procter & Gamble Co. v. Banker’s Trust Co.*, 78 F.3d 219 (6th Cir. 1996) and *Brown & Williamson v. FTC*, 710 F.2d 1165 (6th Cir. 1983)—and place under seal the Response, if the Court places under seal CommonSpirit’s motion and the supporting declaration.

Respectfully submitted,

/s/ W. David Bridgers

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CERTIFICATE OF SERVICE

I hereby certify that, on December 7, 2022, a true and accurate copy of the foregoing has been served by the Court's electronic filing system on the following:

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